# 92-388

Supreme Court, U.S.
FILED
AUG 31 1992
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October 1992 Term

No. _____

LEWIS R. ANDERSON,
I.D. BREEDEN, SR.,
PHIL KAUBLE, et al,
-v-
IN THE MATTER OF:
CONTINENTAL STEEL CORPORATION,
FORMERLY KNOWN AS
PENN-DIXIE STEEL CORPORATION,
FORMERLY KNOWN AS
PENN-DIXIE INDUSTRIES,
INCORPORATED, et al,

**PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

Submitted By:

Mark Garringer
Attorney for Petitioners
2802 N. Delaware Street
Indianapolis, IN 46205
Tel: (317) 925-4110

## QUESTION PRESENTED

This appeal addresses a question of exceptional importance as to whether or not Appellants have any standing to invoke that plain meanings be given to the Rules concerning their claims rendered to money in a U.S. bankruptcy court, and whether or not the Seventh Circuit Court of Appeals has any duty to maintain the integrity of the legal profession in the face of a denial of any duty to account to Appellants for the claims of Appellants rendered to money by the attorneys who negotiated and rendered the Appellants claims to money in a U.S. bankruptcy court.

## LIST OF PARTIES

Pursuant to Rule 21.1(b), the parties who have appeared in the appeal case no. 91-3387 are listed below.

APPELLANTS:

Lewis R. Anderson,
I.D. Breeden, Sr.,
Phillip L. Kauble and
Wade E. Kauble
by counsel Mark Garringer, Esq.

APPELLEES:

William P. Wooden, Esq.
John D. Nell, Esq.
WOODEN McLAUGHLIN & STERNER
1600 Capital Center South
201 North Illinois Street
Indianapolis, Indiana 46204
Tel: (317) 639-6151

INDEX


| | Page |
|---|---|
| Question Presented ..... | i |
| List of parties ..... | ii |
| Index ..... | iii-iv |
| Opinions Below ..... | 2 |
| Jurisdiction ..... | 2 - 3 |
| Rules Involved ..... | 3 - 4 |
| Statement of Case ..... | 4 - 12 |
| I. FIRST SUBSTANTIAL DEPARTURE FROM THE LAWS OF THE UNITED STATES | |
| THE CIRCUIT COURT IS REFUSING TO REQUIRE BAMBERGER TO ACCOUNT FOR ANDERSON'S MONEY WHEN IT IS REQUIRED BY LAW TO DO SO ... | 12 - 19 |
| II. SECOND SUBSTANTIAL DEPARTURE FROM THE LAWS OF THE UNITED STATES | |
| THE DECISION RELIES ON DETERMINATIONS OF A LOWER COURT WITHOUT JURISDICTION TO DO SO ..... | 19 - 21 |
| III. THIRD SUBSTANTIAL DEPARTURE FROM THE LAWS OF THE UNITED STATES | |
| THE CIRCUIT COURT IS BIFURCATING ANDERSON FROM HIS INTERESTS IN A MANNER UNKNOWN TO THE LAWS OF THE UNITED STATE TO FIND THAT ANDERSON HAS NO STANDING TO ENFORCE THE PLAIN MEANINGS OF OF THE RULES ..... | 21 - 29 |

CONCLUSION ..... 29 - 30

PRECISE RELIEF REQUESTED ..... 30

Appendix A-
Judgment - with Oral Argument
of the U.S. Court of Appeals
for the 7th Circuit
dated June 17, 1992 ..... 32 - 33

Appendix B-
Order of the U.S. Court of
Appeals for the 7th Circuit
dated June 17, 1992 ..... 34 - 46

Appendix C-
Entry of the U.S. District Court
for the Southern District of
Indiana ..... 47 - 54

Appendix D-
Entry of U.S. Bankruptcy Court
for the Southern District of
Indiana ..... 55 - 89

Appendix E-
Rule X of Rules of Disciplinary
Enforcement of the U.S. District
Court, Southern District of
Indiana ..... 90

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Lewis R. Anderson, I.D. Breeden, Sr. Phillip L. Kauble, and Wade E. Kauble (hereinafter, "Anderson") pray that a Writ of Certiorari issue to review the judgment of the U.S. Seventh Circuit Court of Appeals entered in the matter of Lewis R. Anderson, I.D. Breeden, Sr., Phillip L. Kauble and Wade E. Kauble, Petitioners, -v- William P. Wooden, Esq., John D. Nell, Esq., the law firm of Wooden, McLaughlin & Sterner, Paul T. Deignan, Esq., John Wood, Esq., and the law firm of Bamberger & Feibleman, Respondents in the bankruptcy of Continental Steel Corporation, formerly known as Penn-Dixie Steel, formerly known as Penn-Dixie Industries, Inc., in the United

States bankruptcy court for the Southern District of Indiana case no. IP85-5415-V.

## OPINIONS BELOW

The Judgment and opinion of the U.S. Seventh Circuit Court of Appeals is unreported and is reproduced in Appendix A and B hereto, infra., at pages 32-34.

The opinion of the district court appealed to the Circuit Court is reproduced at Appendix C hereto, infra., at page 47.

The opinion of the bankruptcy court appealed to the district court is reproduced at Appendix D hereto, infra., at page 55.

## JURISDICTION

The Judgment and opinion of the U.S. Seventh Circuit Court of Appeals was entered on June 17, 1992. The jurisdiction of the Supreme Court is

invoked under 28 U.S.C. §1254(1).

## RULES INVOLVED

The Rules involved are Rule V(A) of the Rules of Disciplinary Enforcement of the U.S. District Court for the Southern District of Indiana which provide:

> A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before the Court shall come to the attention of a judge of this Court, whether by complaint of otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

and Rule 1.15(b) of the Rules of Professional Conduct of the Indiana Supreme Court which provides in pertinent part:

> a lawyer shall promptly deliver to the client or third person any funds or other property that the client or

third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

## STATEMENT OF THE CASE

Anderson was employed by Continental Steel Corporation (hereinafter, "Continental") and a member of the United Steelworkers of America Local 1054 (hereinafter, the "Union" and "Local 1054" , 1054", respectively.

On November 25, 1985, Continental filed for voluntary relief in the U.S. bankruptcy court for the Southern District of Indiana under the provisions of Chapter 11 of the U.S. Bankruptcy Code [Title 11, U.S.C.]. The Union intervened on behalf of Local 1054 by counsel Bamberger & Feibleman (hereinafter, "Bamberger") during the Chapter 11 proceedings.

On February 25, 1986, the Continental bankruptcy was converted to a Chapter 7

proceeding. Continental closed the doors to the facility at which Anderson worked and Anderson had no expectation to return to work for Continental. Anderson had sum certain claims for wages and employment related benefits against the bankrupt estate of Continental Steel.

In November, 1986, the Union, by counsel Bamberger, filed an adversary complaint in Adversary Proceeding 86-593 in the Continental bankruptcy to determine the validity and priority of wage claims and statutory liens of members of Local 1054 against the bankrupt estate. No notice of the proceeding was given to Anderson or other claimants.

In April, 1988, the Union and Bamberger executed a Settlement Agreement "on behalf of members of Local 1054" in the bankruptcy of Continental which was approved by the bankruptcy

court in April, 1988. The Union had established a statutory trusteeship over Local 1054 pursuant to 29 U.S.C. §461 et seq., in 1986, and a Terminal Trusteeship Information Report Form was filed by the Union with the U.S. Department of Labor in 1987 which established the termination date of the prior Local 1054 as July 7, 1987.

In September, 1989, the undersigned counsel for Anderson filed an appearance for Anderson's wage claims in the Continental bankruptcy attaching the Powers of Attorney executed by Anderson and 124 others. In October, 1989, the Union, by counsel Bamberger, moved to dismiss Adversary Proceeding 86-593 "with prejudice" which was granted by the bankruptcy court. There was no notice to Anderson of Adversary Proceeding 86-593 at any time, including the extinguishment of his

claims "with prejudice."

Anderson filed an action for accounting against Bamberger in a state court action for information concerning Anderson's claims rendered to money. Bamberger denied any duty to account or provide information to Anderson. Id. Bamberger asserted it had no duty to account or provide information on grounds that Bamberger represented a labor union and a named member of a class pursuant to Rule 23 Fed.R.Civ.P., that there was no direct attorney-client relationship between Anderson and Bamberger, and, thus, there is no duty to account by Bamberger. Anderson moved to remove the state court action to the bankruptcy court on grounds that this was a matter concerning the "administration of the bankrupt estate." 11 U.S.C. §157(a).

The Pension Benefit Guaranty Corpor-

ation commenced a plan termination proceeding of the pension plan of which Anderson was a plan participant, pursuant to 29 U.S.C. §1342. The plan termination proceeding was referred to the bankruptcy court as Adversary Proceeding 86-141. The Union moved to intervene on behalf of Local 1054 as a plan participant. However, this motion was never ruled on. In February, 1988, Anderson's counsel Hopkins & Sutter moved to intervene in the plan termination proceeding. In March, 1988, the Union, by counsel Bamberger, objected to intervention by Anderson's counsel on grounds that the Union was the official bargaining agent for Anderson in March, 1988, and that the Union had Powers of Attorney from the plan participants.

In 1990, Anderson filed a report of attorney misconduct in the bankruptcy

court and moved that the bankruptcy court refer the matter to counsel for the Indiana Supreme Court Disciplinary Commission pursuant to Rule V(A) and Rule X of the Rules of Disciplinary Enforcement of the U.S. district court for the Southern District of Indiana. Rule V(A) supra, at 3; Rule X infra, in Appendix E at 90.

The misconduct report alleged that during the years 1986 and 1987, Bamberger advised all prospective counsel that Anderson attempted to hire that Bamberger "represented" Anderson. It alleged Bamberger concealed the existence of the Adversary Proceeding where Anderson's wage claims were asserted from Anderson. Id. It alleged that in October, 1989, Bamberger's counsel denied any personal knowledge of any adversary proceeding where the interests of Anderson were litigated

while contemporaneously Bamberger was procuring the extinguishment of Anderson's claims "with prejudice" in Adversary Proceeding 86-593. Id. It alleged in Adversary Proceeding 86-141 that Bamberger fraudulently asserted "Powers of Attorney" executed by the pension plan participants, that it did not have.

The misconduct report alleged that Bamberger fraudulently asserted a collective bargaining agency of the Union over representation of Anderson's claims when Bamberger knew that the collective bargaining agency had ceased to exist. Id. It alleged that Bamberger was a party to the fraud of negotiating Anderson's claims to money in bankruptcy court on behalf of Anderson as a "member" of Local 1054 of the Union, when the entity of Local 1054 no longer existed, while depriving Anderson of

any information on grounds that he was no longer a "member" of the Union. Id. The misconduct report at paragraph 18:

> 18. That Bamberger violated, and is now violating, Rule 1.15 of the Rules of Professional Conduct by the rendering of Claimants' claims to money under the guise and shell of the "Union Trust Fund" and the "Union Medical Claims Committee" in the administration of this bankruptcy without accounting for Claimants' property when asked to do so.

The bankruptcy court denied Anderson's motion to appoint counsel contained in the misconduct report on grounds that there was not a "shred of support" to the allegations. Appendix D, infra, at page 88.

The Settlement Agreement approved by the bankruptcy court in March, 1988, established a Union Employee Discretionary Trust to be administered by three trustees appointed by the Union. The bankruptcy trustee reported that as of December 31, 1991, $1,124,000.00 had

been distributed from the bankrupt estate to the Union Employees Discretionary Trust. There is no evidence or accounting in any public record as to where this $1,124,000.00 went.

## I. FIRST SUBSTANTIAL DEPARTURE FROM THE LAWS OF THE UNITED STATES

### THE CIRCUIT COURT IS REFUSING TO REQUIRE BAMBERGER TO ACCOUNT FOR ANDERSON'S MONEY WHEN IT IS REQUIRED BY LAW TO DO SO

One thing is certain. From day one, Anderson only sought information from Bamberger concerning where his claims rendered to money went. It is undisputed fact of record that Bamberger rendered Anderson's claims to money. Rule 1.15(b) of Rules of Professional Conduct of the Indiana Supreme Court provides in pertinent part:

> "[A] lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall prompt-

ly render a full accounting regarding such property."

Rule 1.15(b) is plain in meaning and embodies the fundamental notions of honesty and integrity held by members of the general public. The Supreme Court says that the Rules must be given their plain meaning. Pavlic & LeFlore v Marvel Group, 493 U.S. 120, 123, 107 L.Ed.2d 438, 110 S.Ct. 456 (1989). Anderson has been adamant throughout, that notwithstanding any direct attorney-client relationship, Bamberger has duties to third-parties pursuant to Rule 1.15(b) of Rule of Professional Conduct and applicable Indiana law. Herman v Frey, 537 N.E.2d 529 (Ind.App. -1989). Walker v Lawson, 526 N.E.2d 968 (Ind.-1988). There is a shred of support to paragraph 18 of the misconduct report alleging a "Union Trust Fund." The bankruptcy trustee

distributed $1,124,000.00 to the Union Employee Discretionary Trust Fund. Where did this $1,124,000.00 go?

One thing is certain. This $1,124,000.00 did not depart from the bankrupt estate of Continental Steel pursuant to the laws of the United States. There are only two procedures outlined in Title 11 of the U.S. Code (the Bankruptcy Code) for receiving money from bankrupt estates. There are applications for compensation by attorneys and other professionals pursuant to 11 U.S.C. §330 and Rule 2016 of the Bankruptcy Rules; and there are filings and allowance of proof of claims or interests pursuant to 11 U.S.C. §§501, 502. In either event, the right, title or interest of the recipient of money from a bankrupt estate is a matter of public record prior to distribution. In other words,

the recipient of money and the right to receive money from this $1,124,000.00 distributed to the Union Employee Discretionary Trust Fund should be a matter of public record as required by law. Id. However, it is not.

Another thing is certain. There is no statutory provision in the laws of the United State for the transfer of $1,124,000.00 of the Continental estate "to be administered by three trustees appointed by the United Steelworkers of America." Title 11 of the U.S. Code requires application for compensation or proofs of claim as preconditions to receiving money from bankrupt estates. Thus, not only are the Rules suspended as to Bamberger, the laws of the United States are suspended as to Bamberger. Id.

The Advisory Committe Notes to Rule 2019 of Bankruptcy Rules of Procedure

make clear that an intervenor, such as the Unions in Chapter 11 proceedings are not entitled to fees or compensation for expenses. However, this only adds to the puzzlemment of where this money went and for what good reason pursuant to laws of the United States.

As to the "Powers of Attorney" asserted by Bamberger in the pension plan termination proceeding, Anderson asserts that Bamberger held no valid Powers of Attorney from the plan participants at any time. Rule 9010(c) of the Bankruptcy Rules of Procedure requires that valid Powers of Attorney be a matter of public record. Thus, if Rule 9010(c) were enforced by the lower courts, it would be easy to ascertain the truth of Anderson's assertion that Bamberger fraudulently asserted Powers of Attorney that it did not have. However, that is another Rule suspended

as to Bamberger.

As to the "official bargaining agency" of the Union to represent Anderson in the pension plan termination proceeding, Anderson has been consistent that the Union could not be the exclusive bargaining agent for plan participants pursuant to the "holding" of the U.S. Supreme Court in Allied Chemical v P.P.G. Co., 404 U.S. 157, 30 L.Ed.2d 341, 92 S.Ct. 383. The "holding" of Allied Chemical:

> [13] In this cause, in addition to holding that pensioners are not "employees" within the meaning of the collective-bargaining obligations of the Act, we hold that they were not and could not be "employees" included in the bargaining unit ...
>
> Although those terms may include persons on temporary or limited absence from work, such as employees on military duty, it would utterly destroy the function of language to read them as embracing those whose work has ceased with no expectation of return.
>
> [404 U.S. at 172, 30 L.Ed.2d at 353]

It has not occurred to the lower courts to inquire with Bamberger as to what authority in the laws of the United States the Union has as "exclusive bargaining agent" for Anderson. That is because there is none. Likewise, it has not occurred to the lower courts to inquire as to how Bamberger could execute a settlement agreement in the bankruptcy court in March, 1988, on behalf of active "members" of Local 1054 when the Union had filed Terminal Trusteeship Reports with the Department of Labor extinguishing this entity nine months prior to the execution of the settlement agreement.

In Pepper v Litton, 308 U.S. 295, 306-307, 60 S.Ct. 283, 84 L.Ed. 281 (1940), when a fiduciary's dealings are challenged, his dealings are subjected to rigorous scrutiny. 308 U.S. 306. A fiduciary cannot violate the rules of

fair play to conceal information required by law to be revealed, and utilize his unique access to information to his own preferment. 308 U.S. 310. The decision of the Circuit Court is repugnant to Pepper v Litton, supra; 11 U.S.C. §§330, 501, and 502; and the plain meanings of the Rules delineated in this First Substantial Departure From the Laws of the United States in conflict with Marvel Group, supra; Rule 1.15 of the Rules of Professional Conduct and Rule V(A) of the Rules of Disciplinary Enforcement of the District Court.

## II. SECOND SUBSTANTIAL DEPARTURE FROM THE LAWS OF THE UNITED STATES

### THE DECISION RELIES ON DETERMINATIONS OF A LOWER COURT WITHOUT JURISDICTION TO MAKE SUCH DETERMINATIONS

Anderson has consistently argued that the bankruptcy court does not have

jurisdiction to make such determinations as to the merits of the misconduct report and that the Indiana Supreme Court has exclusive jurisdiction over the conduct of attorneys in the state of Indiana. Rule V(A) conforms with the jurisdictional mandates. Nevertheless, the "facts" in decision of the Circuit Court "After determining that there had been no fraudulent behavior, the bankruptcy court declined to refer the Report to counsel for further investigation." Appendix A infra, at page 35.

The bankruptcy court had no jurisdiction to make such determination found in the laws of the United States. Northern Pipeline v Marathon Oil, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1983) and 11 U.S.C. §157. The bankruptcy court had no jurisdiction to determine that the misconduct report lacked "a shred of support." The words

"inferior court" apply to courts of special and limited authority erected on such principles that their proceedings must show jurisdiction. Re: Cuddy 131 U.S. 280, 9 S.Ct. 703 33 L.Ed. 435. The decision of the Circuit Court blithely relies on determinations by a bankruptcy court without jurisdiction to make such determinations.

## III. THIRD SUBSTANTIAL DEPARTURE FROM THE LAWS OF THE UNITED STATES

### THE CIRCUIT COURT IS BIFURCATING ANDERSON FROM HIS INTERESTS IN A MANNER UNKNOWN TO THE LAWS OF THE UNITED STATES TO FIND THAT ANDERSON HAS NO STANDING TO ENFORCE THE PLAIN MEANINGS OF THE RULES

Rule V(A) of the U.S. District Court for the Southern District of Indiana makes it clear that the court shall refer to counsel for the Disciplinary Commission upon allegations, if substantiated, would warrant discipline.

Rule V(A), supra, at page 3; Rule X at infra, at page 90. There is no dispute that the lower courts failed to give Rule V(A) its plain meaning, contrary to Pavlic & LeFlore v Marvel Comic Group, supra.

However, the Circuit Court avoided giving Rule V(A) its plain meaning while avoiding the issues raised in the first two Substantial Departures from the Laws of the United States delineated in this petition, by finding that Anderson lacked standing to require that Rule V(A) be given its plain meaning. Appendix B infra., at page 39. The Circuit Court determined that Anderson was a "mere informer" with no standing to do other than inform. Id.

The "gist of the question of standing" is whether the party seeking relief has "alleged such a personal

stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Baker v Carr, 369 US 286, 204, 7 L.Ed.2d 663, 82 S.Ct. 691 (1962). In other words, when standing is placed in issue in a case, the question is whether the person *[392 US 100] whose standing is *challenged is a proper party to request an adjudication of a particular issue. Flast v Cohen, 392 U.S. 83, 99-100, 20 L.Ed2d 947, 961, 88 S.Ct. 1942 (1962). Of course, Anderson is not requesting the "adjudication" of a particular issue from the bankruptcy court. To the contrary. However, if there is a "particular issue" that Anderson has exhausted all remedies to get a determination on, it is the issue

of Bamberger's duty to account for Anderson's claims rendered to money in the settlement of the Continental bankruptcy. Bamberger says that it has no duty to provide information to Anderson, when this is plain contrary to law. Rule 1.15(b) of Disciplinary Rules of the Indiana Supreme Court, reproduced at pages 3-4, supra; Herman v Frey, supra; Walker v Lawson, supra; Pepper v Litton, supra.

Thus, the issue of standing must focus in on the issue of whether Anderson is the "proper party" to raise the issue of where his claims rendered to money went, and whether or not Bamberger has a duty to account for his claims rendered to money. Flast v Cohen, supra.

Of course, we do not see a determination by the lower courts that Bamberger has no duty to account to

members of the general public for their claims rendered to money. Appendix, passim. Instead, the usual puff and smoke to reach the same result. Id. Bamberger renders claims of members of the general public to money without the knowledge or consent of the claim holder, and Bamberger has no duty to account to the claim holder. Anderson is not interested in the claims of others, but only his claims rendered to money.

It is clear that Anderson properly invoked the judicial process by presenting a "controversy" in the constitutional sense before the bankruptcy court, and that Anderson was the proper party to raise the issue before the bankruptcy court. S.v D., 410 U.S. 614, 35 L.Ed 2d 536, 93 S.Ct. 1146. The decision of the Circuit Court is contrary to S.v D..

Likewise, there is no analysis of "palpable economic injury" by the lower courts. A palpable economic injury is sufficient to lay the basis for standing, with or without a specific statutory provision for judicial review. Sierra Club v Morton, 405 US 727, 92 S.Ct. 1361 31 L.Ed 2d 636. It would be a bizarre experience to get hit by a truck and to get out of the hospital, only to find that Bamberger had rendered your claims to money and had no duty to account to you. Such is the case here.

At oral argument, Anderson's counsel described the phenomenon of a labor organization, complete with active members, executing a settlement agreement in the bankruptcy court, nine months after another labor organization with the same name filed a final Terminal Trusteeship Report with the

Department of Labor, and that phenomenon of the "Union Employees Discretionary Trust", collectively with other phenomena, as sightings of "Unidentified Flying Labor Organizations." There are no reports to the Department of Labor pursuant to the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§410 et seq.,. However, there is a substantial amount of financial activity conducted by these transcendental labor organizations if the $1,124,000.00 distributed to the Union Employees Discretionary Trust is any indication. There are no duties to the "membership" of these labor organizations pursuant to 29 U.S.C. §501. There are no duties to account to anybody but themselves.

The Fifth Amendment of the United State Constitution provides that persons shall not be deprived of

property without due process of law. Goldberg v Kelly, 397 U.S. 254, 35 L.Ed 287, 90 S.Ct. 1011. In Goldberg the Supreme Court outlines "the right to be heard" in any litigation or government activity by any party whose interests are being determined. Id. It is an instinctive right with "ancient roots." Id. Such is the case here. The decision of the Circuit Court that Anderson has no standing to be heard and invoke the judicial process concerning Anderson's claims rendered to money is a violation of Anderson's rights guaranteed by the due process clause of the Fifth Amendment. Id.

As Abraham Lincoln said about slavery, "if this is not wrong, then nothing is wrong." So it is here. Congress need not bother to enact laws, nor need the Supreme Court render decisions. That is because the lower

courts need not follow the plain meaning of the Rules and the laws of the United States. The lower courts have no duty to maintain the integrity of the legal profession practicing before them on such a simple issue as the duty of lawyers to account for the claims they render to money to the true claim holders.

## CONCLUSION

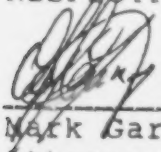
The U.S. Seventh Circuit Court of Appeals dramatically departed from the laws of the United States when it found that Anderson had no standing to invoke the judicial process concerning his claims rendered to money. The Circuit Court sanctioned similar departures of the laws of the United States by the lower courts which go to the heart of common notions of integrity and honesty of the legal profession practicing in our bankruptcy courts. The big winners

are the recipients of largesse from the Union Employee Discretionary Trust who have no right, title or interest to the property under any known laws of the United States. The big loser is Anderson who has no standing to ascertain what happened to his claims rendered to money, and the integrity of the judicial process.

PRECISE RELIEF REQUESTED

For the foregoing reasons, Anderson prays that writ of certiorari issue to review the judgment of the U.S. Seventh Circuit Court of Appeals.

RESPECTFULLY SUBMITTED BY:



Mark Garringer
Attorney for Petitioners
2802 N. Delaware Street
Indianapolis, Indiana 46205
Tel: (317) 925-4110

# APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JUDGMENT - WITH ORAL ARGUMENT

JUNE 17, 1992

Before

Hon. Joel M. Flaum, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

Hon. Milton I. Shadur, District Judge*

No. 91-3387

| | | |
|---|---|---|
| IN THE MATTER OF: CONTINENTAL STEEL CORPORATION, formerly known as PENN-DIXIE STEEL CORPORATION, formerly known as PENN-DIXIE INDUSTRIES, INCORPORATED, | ) | Appeal from the United States District Court for the S.D. of Indiana, Indianapolis, Division |
| Debtor, | ) | 91 C 362 |
| APPEAL OF: LEWIS R. ANDERSON, I.D. BREEDEN, SR., PHIL KAUBLE, et al. | ) | Sarah Evans Barker, Judge |

This cause was heard on the record from the above mentioned District Court, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this court that the judgment of the District Court is DISMISSED, with costs, in accordance with the decision of this court entered this date.

---

* The Honorable Milton I. Shadur, District Judge for the Northern District of Illinois, is sitting by designation.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Argued April 7, 1992
June 17, 1992

Before

Hon. Joel M. Flaum, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

Hon. Milton I. Shadur, District Judge*

| | | |
|---|---|---|
| IN THE MATTER OF: CONTINENTAL STEEL CORPORATION formerly known as Penn Dixie Steel Corporation, formerly known as Penn Dixie Industries, Incorporated, | ) | Appeal from the United States District Court for the S.D. of Indiana, Indianapolis Division |
| Debtor, | ) | 91 C 362 |
| No. 91-3387 | ) | Sara Evans Barker, Judge |
| APPEAL OF: LEWIS R. ANDERSON, I.D. BREEDEN, Sr., PHIL KAUBLE, et al. | ) | |

ORDER

Appellants filed a report of attorney misconduct in the bankruptcy court and

requested that the bankruptcy court take disciplinary action against the appellees. The Bankruptcy Court took no disciplinary action after concluding that there was not a "shred of support" for the report of misconduct. The appellants appealed the denial to the district court. The district court affirmed the bankruptcy court. We hold that the appellants have no standing and dismiss the appeal.

## I. Facts

The appellants are claimants to a pension plan that has been the subject of dispute in adversary proceedings before the bankruptcy court. On March 10, 1988, the bankruptcy court approved a settlement agreement between the Union, the Pension Benefit Guaranty Company and the trustee in bankruptcy

---

* Hon. Milton I. Shadur, District Judge for the Northern District of Illinois, is sitting by designation.

regarding the termination date of the pension plan. Dissatisfied with the administration of benefits from the plan pursuant to the terms worked out by the Union, the appellants filed with the bankruptcy court a "Verified Report to the Court of Egregious Attorney Misconduct by William P. Wooden, Esq., John D. Nell, Esq., Wooden McLaughlin & Sterner and Paul T Deignan, Esq., John Wood and the Law Firm of Bamberger & Feibleman and Motion to Appoint Counsel" ("Report"). The report alleged misconduct both on the part of Bamberger & Feibleman and several of its individual attorneys who represented the Union in the bankruptcy proceedings and also on the part of Wooden, McLaughlin & Sterner and several individual attorneys who defended Bamberger & Feibleman in an action for accounting in state court.

The allegations against the attorneys break down into three groups: (1) Bamberger and Feibleman filed claims in the adversary proceedings before the bankruptcy court on behalf of the appellants without the appellants' knowledge or consent, (2) Bamberger and Feibleman participated in settlement of the former employees' claims to $3,500,000.00 and participated in the liquidation of Pension Plan assets of $40,000,000.00, and the sums are not accounted for, and (3) Wooden, McLaughlin & Sterner's answer in state court denying the attorney-client relationship between Bamberger & Feibleman perpetrated a fraud on the state court. The appellants requested that the matter be referred to the Indiana Disciplinary Commission of the Indiana Supreme Court for investigation

pursuant to Rule V(A) of the Rule of Disciplinary Enforcement for the Southern District of Indiana ("Rules of Disciplinary Enforcement").

After determining that there had been no fraudulent behavior, the bankruptcy court declined to refer the Report to counsel for further investigation. Mem. Op. Mar. 28, 1991. After accepting review of the bankruptcy court's order under the collateral order doctrine, the district court determined that the bankruptcy court's findings of fact were not clearly erroneous and concluded that the bankruptcy court had not abused its discretion by not referring the matter to counsel for further investigation. Furthermore, the district court found that after the bankruptcy court's decision, the appellants filed a claim of misconduct

on the part of Attorney Deignan with the Indiana Disciplinary Commission and that the Indiana Disciplinary Commission had concluded that Deignan was not guilty of misconduct and dismissed the complaint. Accordingly, the district court determined that the appeal from the bankruptcy court's decision was moot as well as meritless. Mem.Op.Sep.30,1991.

On appeal to this court, the appellants maintain that the bankruptcy court was obliged to refer the matter to counsel pursuant to Rule V(A) of the Rules of Disciplinary Enforcement. We dismiss the appeal because the appellants lack standing.

## II. Analysis

The court's power to discipline any attorney after receiving information of misconduct stems from the court's

inherent power to oversee the conduct of its officers and maintain the integrity of the court. See In re Echeles, 430 F.2d 347, 349 (7th Cir. 1970) (disbarment and suspension proceedings are not lawsuits between parties but are in the nature of an inquest or inquiry as to the conduct of the respondent); In re Teitlebaum, 253 F.2d 1, 2 (7th Cir. 1958) (status of person bringing information to the court was that of informer). By bringing their Report to the bankruptcy court, the appellants did not initiate a lawsuit or become parties to a disciplinary proceeding but simply served as informants to the court. Beyond acting as informer, an individual may not exercise control over disciplinary proceedings. Mattice v. Meyer, 353 F.2d 316, 319 (8th Cir.

(1965). Even if the reporting person is a party or counsel to a party in the case where the ethical violation has occurred, the role of a party or counsel ends after a report has been submitted to the court. "It remains for the court to vindicate its authority." Ramos Colon v. Unites States Attorney, 576 F.2d 1, 9 (1st Cir. 1978); accord Mattice, 353 F.2d at 319. Accordingly, in In re Teitelbaum, the court concluded that the United States Attorney who reported misconduct of another attorney to the court had no standing to appeal the lower court's decision not to disbar the errant attorney. In re Teitelbaum, 253 F.2d at 2. In re Echeles, this court concluded that the United States Attorney who reported misconduct had standing to appeal only because the district court

gave permission for the appeal. In re Echeles, 430 F.2d at 350.

The appellants in this case, however, see their position as distinguishable from that of the attorneys denied standing in the cases cited above. They request "that the Entry of the District Court be reversed and that instructions to the District court be made to instruct the Bankruptcy Court to appoint counsel of the Disciplinary Commission of the Indiana Supreme Court upon Claimants' allegations, which, if substantiated, would warrant discipline pursuant to Rule 5(A) of the Rules of Disciplinary Enforcement of the District Court." Appellants contend that the bankruptcy court did not comply with the mandatory language of Rule V(A) of the Disciplinary Enforcement Rules of the Southern District of Indiana which provides:

> When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.
>
> Rule V(A), Rules of Disciplinary Enforcement, Southern District of Indiana (emphasis added).

The existence of the local rules, however, does not change the principles of standing guided this court in In re Echeles and In re Teitelbaum. The local

rules do not raise the status of the appellants above that of informers. They create no cause of action but simply guide the court in the exercise of its inherent right to oversee the integrity of the court by disciplining the bar. Accordingly, the appellants in this case have no more standing to appeal the district court's disposition of their report than the United States Attorney in In re Teitelbaum. As informers, the appellants stand in no better position to appeal than a citizen who reports to a district attorney criminal activity that the district attorney decides not to prosecute.

Other appellate courts have noted that a district court's inherent power to discipline attorney who practice before it does not absolve the court from its

obligation to follow the rules it created to implement its exercise of its power. Matter of Thalheim, 853 F.2d 383, 388 (5th Cir. 1988); United States v. Stoneberger, 805 F.2d 1391, 1393-94 (9th Cir. 1986); Matter of Abrams, 423 U.S. 1038 1975); cf. Congregation of the Passion v. Touche, Ross & Co., 854 F.2d 219, 223 (7th Cir. 1988) (despite considerable discretion given to district courts in interpreting their local rules, court of appeals will reverse a district court's construction of its own rule whenever the district court has clearly misconstrued the rule). In all of those cases, however, the disciplined attorney was appealing the district court's violation of its local rules in instituting or conducting proceedings against the disciplined attorney. The requirements

of standing focuses on the party bringing the case before the court and not on the issues he wishes to present. Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 484 (1982) (citing Flast v. Cohen, 392 U.S. 83, 99 (1968). While a reporting party or attorney is not a party to the disciplinary proceeding that may result from his report, an attorney who is disciplined by the district court has become a party to the proceedings and has a right to appeal. Appellants have brought alleged misconduct to the attention of the court. As mere informers, they have no standing to do anything more.

III. Conclusion

For the reasons stated above, the appeal is DISMISSED.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|---|---|---|
| LEWIS R. ANDERSON, I.D. BREEDEN, SR., PHILLIP L. KAUBLE, and WADE E, KAUBLE | ) | |
| Appellants, | ) | |
| vs. | ) | IP 91-362-C |
| WILLIAM P. WOODEN, JOHN D. NELL, WOODEN McLAUGHLIN & STERNER, PAUL T. DEIGNAN, JOHN WOOD, and BAMBERGER & FEIBLEMAN, | ) | |
| Appellees. | ) | |
| In re: | ) | |
| CONTINENTAL STEEL CORPORATION f.k.a. PENN-DIXIE STEEL CORPORATION, and PENN-DIXIE INDUSTRIES, INC., | ) | |
| Debtor, | ) | |
| (Bk. Case No. IP85-5415-V | ) | |

ENTRY

Appellants, injecting themselves in an

ongoing bankruptcy proceeding filed a report charging attorney misconduct and requesting the bankruptcy court to appoint counsel to investigate. The bankruptcy court dismissed the report and denied appointment of counsel on grounds that no evidence supported their charge of attorney misconduct. Appellants appealed to this court claiming the dismissal was an abuse of discretion.

The order appealed from was not, in the ordinary sense, a final order. This court recognizes, however, that the finality requirement in the bankruptcy context is less rigid than in the ordinary civil context. In re Johns-Manville Corp., 824 F.2d 176, 179 (2nd Cir. 1987); see In re Saco Local Development Corp., 71 F.2d 441, 444 (1st Cir. 1983) ("Congress has long

provided that orders in bankruptcy cases my (sic) be immediately appealed if they finally dispose of discrete disputes within the larger case"). The appellants' filed report alleging misconduct is essentially an independent and discrete filing within a larger context. Accordingly, this court has jurisdiction to consider an appeal of the dismissal as a final order,[1] final as to the issue of whether counsel will be appointed to investigate the charges of attorney misconduct. To the extent the order was not final, the court has jurisdiction to consider this appeal under the "collateral order doctrine." Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).

The collateral order doctrine permits review of orders which are dispositive

of a collateral issue, sufficienltly independent of the main cause of action, and effectively unreviewable on appeal from a final judgment. Cohen, supra; Economu v. Borg-Warner Corp., 824 F.2d 181 (2nd Cir. 1987). Under Cohen, the order appealed from must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be incapable of a realistic review at the conclusion of the underlying case. Cohen, supra. Accepting that the first two elements of the Cohen test are clearly present here, we recognize that although bankruptcy proceedings continue, in a

---

[1] This court has no jurisdiction over the appeal to the extent the order is interlocutory--appellants have not requested nor has the bankruptcy court granted leave to appeal. see 28 U.S.C. §158(a); Rule 8001(b).

practical sense, this case is over. See Bankruptcy court's entry of March 28, 1991 ("The Report of Attorney Misconduct and Motion for Appointment of Counsel are just the latest in an ever lengthening series of attempts to undermine the various settlements in this bankruptcy that are final, no longer appealable, and binding all parties, including the Claimants"). As such, we forsee no realistic "final order," and were we to deny review at this stage, appellants would effectively receive no review of the bankruptcy court's order dismissing the charges of attorney misconduct.

Appellants filed their complaint citing to Disciplinary Enforcement Rule V of Rules of the United States District Court for the Southern District of Indiana. The bankruptcy court in not

bound by the southern district court's rules, see Order Adopting Local Rules, p. vii, but even if it were, Rule V does not create a cause of action or require a judge to appoint counsel to investigate an unsubstantiated charge of attorney misconduct. We review the report and motion, therefore, as a general motion requesting the court to appoint counsel to investigate charges of misconduct, and we review the order denying the motion under an abuse of discretion standard.

Appellant claims of misconduct fall into three groups. First, that attorneys John Wood and Paul Deignan (of the law firm Bamberger & Feibleman) filed claims in bankruptcy without the claimants' consent, second, the attorneys participated in a settlement and liquidation, the funds of which

are now unaccounted for, and third, the attorneys denied an attorney-client relationship between themselves and the claimants, thereby perpetrating a fraud. The bankruptcy court found as fact--having overseen the proceedings for over five years--that the appellants' claims were groundless and that the attorney's never represented the named claimants. The bankruptcy court concluded that "allegations which lack any shred of support and which are clearly incapable of being substantiated are insufficient to bring misconduct "to the attention" of this Court."

Upon review, this court finds the bankruptcy court's factual findings of no fraudulent behavior not clearly erroneous, and therefore it was not an abuse of discretion to deny appellants'

motion for an investigation and the appointment of counsel. Additionally, we note that appellants, after the bankruptcy court denied the motion, took it upon themselves to file a claim of misconduct (charging Brett Clement and Deignan, but not Wood with misconduct) with the Indiana Disciplinary Commission. The commission referred the matter to the Indianapolis Bar Association for a report and investigation. Upon review of the Indianapolis report, the Disciplinary Commission concluded that the attorneys were not guilty of misconduct and dismissed the complaint. This appeal is thus moot as well as meritless.

Accordingly, we dismiss the appeal of the bankruptcy court's order denying the appointment of counsel.

It is so ORDERED this 30th day of September, 1991.

## APPENDIX D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | |
|---|---|
| IN RE: | ) BANKRUPTCY NO. |
| | ) IP85-5415-RWV-7 |
| CONTINENTAL STEEL CORPORATION, f/k/a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC., | ) |
| DEBTOR. | ) |

### ENTRY DENYING CLAIMANTS' MOTION TO APPOINT COUNSEL ON REPORT OF ATTORNEY MISCONDUCT

This matter comes before the Court on the Plaintiffs' Verified Report to the Court of Egregious Attorney Misconduct by William P. Wooden, Esq., John D. Nell, Esq., the Law Firm of Wooden, McLaughlin & Sterner and Pault (sic) T. Deignan, Esq., John Wood, the Law Firm of Bamberger & Feibleman and Motion to Appoint Counsel ("the Report of Misconduct" and "the Motion to Appoint Counsel") filed by Lewis Anderson, I.D.

Breeden, Phil Kauble and Wade Kauble ("the Named Claimants"), by their attorney Mark Garringer ("Garringer") on January 8, 1991. The Court finds no merit to the Report of Misconduct and denies the Motion to Appoint Counsel for the reasons below.

## Background Information

### The Pension Plan and the Bankruptcy

The Pension Benefit Guaranty Corporation ("the PBGC") is a wholly-owned United States Government Corporation established under 29 U.S.C. section 1302(a) to administer the pension plan program of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under Title IV of ERISA, the federal government guarantees certain benefits under plans of private employers.

Employers are required to meet certain

funding standards with respect to pension plans guaranteed by the PBGC. See 29 U.S.C. section 1082. However, employers may seek waivers of funding requirements from the Secretary of the Treasury, for not more than five consecutive years, if they cannot satisfy the standard without substantial business hardship and if meeting the standards would be averse to the interest of plan participants. See U.S.C. section 1083. With such a waiver, a pension plan may be under funded in an actuarial sense, but not be in violation of ERISA. Many older pension plans were underfunded when they first came under ERISA in the 1970's and have not been able to "catch up" to become fully funded.

The Debtor was a large steel manufacturer whose employees were

covered by several pension plans, including the Continental Steel Corporation 1950 Employee Pension Plan A, ("the Pension Plan" or "the Plan"), in which the Named Claimants were participants. The Plan was established and maintained pursuant to a collective bargaining agreement between the Debtor and United Steelworkers of America ("the Union"), and the Debtor was the administrator of the Plan. The Plan, which was guaranteed by the PBGC, was underfunded, meaning that its assets were insufficient to pay the anticipated benefits that would become due to participants and beneficiaries. The Debtor had gone through a Chapter 11 reorganization in 1980 - 1981. However, it was unable to recover financially despite its reorganization and continued to experience substantial

losses. The Debtor sought and received waivers of the minimum funding requirements for the Plan (and its other pension plans) for the years ending December 31, 1980, 1981, 1982, 1983, and 1984. No further waivers could be sought. On November 25, 1985, the Debtor filed for relief under Chapter 11 of the Bankruptcy Code. The case was converted to Chapter 7 on February 25, 1986, and N. Wayne Etter ("the Trustee") was named trustee.

Claims and Settlements

On February 14, 1986, the PBGC filed an Application for Order to Show Cause, Appointment of a Statutory Trustee and Termination of the Pension Plan ("Application for Termination") in the United States District Court of the Southern District of Indiana, Cause No. 86-186C, seeking authority under 29 U.S.C. section 1342 for terminating the

Plan as of February 14, 1986, and appointing the PBGC as statutory trustee of the Plan. On February 14, 1986, the district court referred the matter to the bankruptcy court, where it proceeded as AP 86-141. The Union and Locals 1056 (sic) and 3601 of the Union (together, for brevity, "the Union") moved to intervene. On March 12, 1986, the Court approved an agreed entry whereby the parties agreed that the Plan be terminated and that the PBGC be appointed statutory trustee, reserving the issue of a termination date.

The PBGC was asserting a termination date of February 14, 1986, which was prior to plant shutdown. If the the (sic) PBGC prevailed, shutdown benefits would not be guaranteed and paid by the PBGC. After lengthy negotiations, (and

some delay caused by the PBGC's involvement in the LTV Steel bankruptcy) the parties agreed that the Plan termination date would be February 25, 1986 (the same date the case was converted to Chapter 7), that plant shutdown would be considered to have taken place on or before February 24, 1986. Thus, since shutdown was before Plan termination, shutdown benefits for eligible employees were covered by the PBGC's guarantee.

As a result of its guarantee obligations with respect to the Plan, and the Debtor's other pension plans, the PBGC was entitled to assert a sizable claim against the Debtor's bankruptcy estate. See 29 U.S.C. section 1362(b).

A large number of former employees and retirees ("the former employees") had

asserted or potentially could assert mechanics and corporate employee liens on the Debtor's assets for unpaid wage and benefits under Ind. Code 32-8-1 and 32-8-24. The Debtor was self-insured with respect to its medical benefits, and many former employees had incurred covered medical expenses that the Debtor had not paid. Also unpaid were substantial amounts of vacation and severance pay. The Union assisted the former employees in making the necessary filings to assert the liens for these claims, and on November 10, 1986, the Union initiated an adversary proceeding, AP 86-593, to determine the validity, priority and extent of the former employees' liens.

The Debtor's major claimants (besides its major lender, which was secured and has been satisfied out of its

collateral) were the Environmental Protection Agency and the Indiana Department of Environmental Management "the environmental claimants"), the PBGC, the former employees, all of which asserted first liens on or priority claims to property of the estate. If the claimants could not agree to share the assets of the estate and the claims were litigated, there was the possibility that one category of claimant could take all the assets and the others would get nothing. For instance, if the environmental claimants prevailed, there would likely be nothing left in the estate for distribution to the PBGC and the former employees. Moreover, without resolution of the competing claims, estate property could not be sold with clear title, funds could not be distributed,

and litigation costs would increase, depleting the estate.

Settlement negotiations were undertaken and on January 28, 1988, the Trustee applied to this Court for approval of a global settlement agreement by which the claims, liens and priorities asserted by the PBGC, the environmental claimants and the former employees would be resolved. To ensure proper notice and due process to all former employees, on February 18, 1988, the Trustee brought an adversary proceeding AP 88-43, against the class of former employees, seeking a determination of the validity and extent of the liens asserted by the former employees. By order dated February 23, 1988, the Court certified two sub-classes, and after a hearing on April 5, 1988, on extensive notice, at which any

objecting party was given the opportunity to be heard, the Court approved settlement of the class action. (AP 86-593 was later dismissed, with respect to the former employees' claims, since those claims were resolved in AP 88-43.) After a hearing on April 12, 1988, the Court held that the proposed global settlement was in the best interests of creditors and the estate,and by order dated April 20, 1988, the Court approved that settlement.

Two former employees, one of whom is one of the Named Claimants, Mr. I.D. Breeden, Sr. ("Breeden") and who purported to speak on behalf of over one hundred other union employees, had objected to approval of the settlement of their claims, and the Court fully heard these objections in in (sic) open

court on April 5, 1988. Breeden's objection was in part based on the assertion that the method used to calculate the claims of the former employees was unfair. The settlement proponents, however, convincingly argued that the complex, individualized method proposed by Breeden would dissipate scarce estate assets and that the simpler method proposed in the settlement would result in a greater distribution to all former employees. Breeden requested was more time to employ counsel and to further evaluate the proposed settlement. The Court, however, concluded that ample notice and time had been provided and that there was no just reason to delay approval of the settlement. The Court therefore overruled both objections and approved the settlement of the former employees' claims.

The class action settlement of the claims of the former employees and the global settlement of the claims of the PBGC, the environmental claimants and the former employees (together "the Settlement") were thus approved after notice and a hearing at which objections were fully heard and considered. No one appealed the orders approving the Settlement and those orders have long been final.

Post-Settlement Events

With the major claims having been settled, the Trustee set about liquidating the remaining assets of the estate and distributing fund according to the Settlement. In late 1989, however, dissatisfied former employees, sometimes represented by attorney Garringer, sometimes purporting to act pro se, began attempting to relitigate

matters that had been earlier resolved, and filing action against various parties involved in the bankruptcy. (This group includes the Named Claimants and others, the constituency of which varies somewhat from action to action. For simplicity, the group will be called "the Claimants".)

An attempt to relitigate the global settlement through appeal of a subsequent court order dealing with certain distributions was dismissed by Judge S. Hugh Dillin of the district court by order dated July 12, 1990.

On February 22, 1990, the Claimants brought an adversary proceeding, AP 90-76, against the Union and Union officials for violations of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. section 401 et seq. This action was dismissed for lack of

subject matter jurisdiction.

On March 20, 1990, the Claimants brought an adversary proceeding, 90-81, against the Trustee, the PBGC, and the former trustee of the Plan assets for failure to advise former employees that the Plan was underfunded. This complaint was dismissed for failure to state a claim.

The Claimants filed applications to remove to this Court cases pending in state court, AP 90-189, 90-197 and 90-242, filed May 7, 1990, May 11, 1990, and June 7, 1990, respectively. The district court has adopted this Court's recommendation to remand or dismiss these removal actions for multiple substantive and procedural defects. AP 90-242 sought removal of a case brought by the Claimants against Bamberger and Feibleman, and members of the firm,

John Wood and Paul Deignan (together "B&F"), which is discussed in more detail below.

The Claimants have filed Rule 60 motions for relief from certain final orders in AP 88-43, 86-593, and in the bankruptcy case itself, on August 31, 1990, June 5, 1990, and August 27, 1990, respectively. These motions have been denied as baseless.

On November 8, 1990, Garringer filed an appearance on behalf of the Claimants in AP 86-141. This appearance was stricken for lack of standing.

Despite the Trustee's and his counsel's opening virtually all their records relating to this case to the Claimants and Garringer and the Trustee's numerous attempts to answer their inquiries about the case, the Claimants filed an onerous discovery request of

the Trustee, first by adversary proceeding, AP 90-28, which was dismissed as procedurally defective, and then by motion. After notice and a hearing, the Court granted the Trustee's request for a protective order respecting the request. The Claimants then filed a motion for removal of the Trustee, which has been denied.

Other objections and motions by Garringer or his clients are still pending. Some of this Court's decisions have been upheld on appeal, the appeals of others are still pending. Motions for sanctions against the Claimants and Garringer are also pending.

The Involvement of the Union and its Attorneys

AP 86-141 was brought by the PBGC to terminate the Pension Plan. Neither the

Union nor the former employees were parties to the action. The Union, however, moved to intervene to contest the proposed early termination date of the Pension Plan, which would have meant that shutdown benefits would not have been guaranteed by the PBGC. The motion to intervene was never formally ruled on, but the Union did brief the issues presented and participated in settlement negotiations. Because the termination date issue was settled (and, the Court notes, favorably to the former employees), the Union's pending motion to intervene was not addressed. B&F represented the Union in this Matter.

The Union assisted former employees in filing the necessary documents to assert mechanics' and corporate employees' liens against the Debtor's

assets. The Union, as plaintiff in AP 86-593, requested a determination of the validity and priority of these asserted liens. B&F represented in this proceeding.

When the Trustee brought AP 88-43 as a class action against all former employees of the Debtor, seeking a determination of the validity of liens they had asserted or might assert, B&F represented the subclass of former Union workers represented by Timothy J. Cheek ("Cheek").

B&F represented the Union and the subclass represented by Cheek, but did not represent individual members of the Union. To the extent the Union's interest in these matters was securing fair and favorable treatment for the former employees, the Union's interest was the same as that of the former employees.

The vast majority of the former employees were satisfied to have their interests represented by the Union in this manner, and in fact, executed powers of attorney explicitly authorizing the Union to represent their interests.

Some former employees, including the Claimants, however, were dissatisfied with the this representation, and employed their own counsel and/or spoke on their own behalf, as was their right. About 200 Claimants, including the Named Claimants, with the apparent exception of Breeden, retained the firms of Hopkins & Sutter and Noel & Noel, to move to intervene on their behalf in AP 86-141. The Union objected to the motion, and after the hearing on the proposed settlement of the Pension Plan termination date, the Claimants'

attorney withdrew the motion to intervene in open court. None of the Claimants appealed this settlement.

All former employees for which there was a known address were notified by first class mail of the proposed settlement of their claims in AP 88-43, and notice by publication was also employed to reach as many former employees as possible. A number of the former employees attended the settlement hearing on April 5, 1988, and one of the Named Claimants, Breeden, purporting to speak for over 100 others, objected in open court. Paul Deignan of B&F stated in no uncertain terms that B&F was counsel for the Union, that although B&F had assisted individuals in the bankruptcy proceeding, it had never accepted representation of any individual former

employee, and that individuals could retain their own counsel if they wished. The Court made it clear that any party was free to retain counsel of his or her choosing, however, the Court found that the time for evaluation of the proposed settlement was passed and that there was no just reason to delay approval of the settlement. None of the Claimants appealed the approval of the settlement in this proceeding.

On March 12, 1990, the Claimants filed a Complaint for Accounting against B&F in the Howard Superior Court No 1, Cause No. 34d01-9003-CP-00084, ("the State Court Action") seeking an accounting based on an alleged attorney-client relationship between B&F and the Claimants, In its answer, B&F represented by William P Wooden, John D. Nell and Katherine L Shelby, of

Wooden McLaughlin and Sterner (together "WM&S") admitted that they filed AP 86-593 and that they appeared on behalf of Cheek in AP 88-43, but denied representing the Claimants individually. The Claimants sought to remove this action to this Court in AP 90-242, and B&F moved to remand or dismiss. On October 22, 1990, this Court submitted to the district court its report recommending the granting of the motion to remand, citing lack of subject matter jurisdiction and numerous procedural defects. On November 29, 1990, the district court adopted this Court's report and recommendation, and the Claimants filed a notice of appeal to the Seventh Circuit.

The Report of Attorney Misconduct

The allegations of the Report of

Attorney Misconduct can be categorized into three groups: (1) allegations that B&F appeared and filed claims in the bankruptcy on behalf of the Claimants without their knowledge or consent, (2) allegations that B&F participated in the settlement of the former employees' claims to $3,500,000.00 and participated in the liquidation of Pension Plan assets of $40,000,000.00, and that these sums are now unaccounted for, and (3) allegations that the answer in the State Court Action, filed by WM&S on behalf of B&F, denying an attorney-client relationship between B&F and the Claimants, was intended to perpetrate a fraud on the state court and perfect concealment of the alleged missing funds.

The Claimants request relief under Rule V(A) of the Rules of Disciplinary

Enforcement for the Southern District of Indiana, which provides:

> When conduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before the Court shall come to the attention of a judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

Rule IV provides that the Rules of Professional Conduct adopted by the court are the Rules of Professional Conduct adopted by the Supreme Court of the state of Indiana, except as otherwise specifically provided.

The Claimants allege that WM&S have violated Rules 3.3 and 8.4(c) of the Rules of Professional Conduct, respectively requiring candor toward a tribunal and prohibiting conduct

involving dishonesty, fraud, deceit or misrepresentation.

The Claimants allege that B&F have violated the above rules, and also Rule 1.2(a), requiring a lawyer to abide by the client's decisions concerning the objectives of representation, consult with the client about the means by which they are pursued, and abide by the client's decision whether to accept a settlement offer, Rule 1.4, requiring a lawyer to communicate with and provide requested information to the client, Rule 1.5(b), requiring a lawyer to communicate to the client the basis or rate of fee, Rule 1.8(f), limiting a lawyer's ability to accept compensation for representing a client for someone else, Rule 1.15, setting forth requirements for safekeeping a client's property, and Rule 1.16(a), requiring a

lawyer to withdraw from representation if the lawyer is discharged.

The Claimants ask that this Court refer this matter to the Indiana Disciplinary Commission of the Indiana Supreme Court for appointment of special counsel and full investigation.

Discussion

The Court has overseen this bankruptcy for over five years now and has personal knowledge of most of the events that form the basis of the Report of Attorney Misconduct. The record will show that neither B&F, WM&S, nor any attorney associated with either firm was ever entrusted with funds from the settlement of the former employees' claims nor assets funding the Pension Plan. The Claimants' allegations regarding misconduct regarding such funds and

assets are totally without basis.

In support of their allegation that the Union represented or purported to represent them personally, the Named Claimants point to Union's motion to intervene in AP 86-141, which begins "Comes now the United Steelworkers of America, Locals 1054 and 3601, participants and beneficiaries of the [Pension Plan] (hereafter "Applicant"), by counsel, and in support of its Application states: ...." However, in that very pleading, attorneys from B&F placed over their signature lines "Attorneys for the United Steel Workers of America, Locals 1054 and 3601". Any potential confusion over the introductory lines was therefore cleared up in the same document. Moreover, other pleadings filed by B&F in AP 86-141 refer only to the Union

and its locals, further dispelling any confusion over B&F's representation. In any case, inartful wording in isolated pleadings would not constitute conduct warranting disciplinary action.

The Named Claimants also rely heavily on the Union's objection to the Claimants' motion to intervene in AP 86-141, in which the Union asserted that it represented the former employees' interests adequately and that it was the exclusive bargaining agent for its members. The Named Claimants assert that the Union was not entitled to represent them or any of the former employees because the bargaining unit had ceased to exist, citing Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Company, 404 U.S. 157 (1971). That case held that retirees were not "employees"

within the meaning of the National Labor Relations Act, that retirees cannot be included in a bargaining unit with active employees, and that an employer's unilateral modification of was not an unfair labor practice because such benefits were not a mandatory subject of bargaining. The court also noted, however, that "nothing we hold today precludes permissive bargaining over the benefits of already retired employees." 404 U.S. at 171 n.11. The case is obviously not dispositive of the issue of whether the Union, as a matter of labor law, was permitted to represent the interests of former employees under a collective bargaining agreement with the Debtor in AP 86-141. The issue of whether the Union was the exclusive bargaining agent of the former employees was never

resolved because the issue of the Plan termination date was settled and the Claimants' motion to intervene was withdrawn. The fact that B&F, in its memorandum in opposition to the Claimants' motion to intervene, made a legal assertion about the Union's representative capacity that was subject to challenge is simply not conduct warranting discipline.

The Named Claimants' argument regarding other pleadings and action need nor be addressed individually, since they are redundant of those already discussed. The inescapable conclusion is that B&F at no time represented the Named Claimants, or any of the former employees individually. The Named Claimants obviously understood this, because three of them, with about 200 other Claimants, retained their own

counsel to represent them in AP 86-141, and Breeden, at the April 5, 1988, hearing, spoke on his own behalf and purportedly on behalf of over 100 other Claimants in opposition to B&F's position. Breeden and other Claimants attending the April 5, 1988, hearing, heard Paul Deignan state emphatically and repeatedly that B&F represented only the Union and not former employees as individuals. Any attempt to plead surprise now, almost three years later, at B&F's denial of individual representation is disingenuous at best. Any assertion that B&F or the Union compromised their claims without their knowledge is belied by the fact that the Claimants actively participated in AP 86-141 and AP 88-43. Any claim that B&F or the Union prejudiced their interests in AP 86-141 is refuted by

the fact that the PBGC relented in its efforts to set an early Plan termination date (in other words, the former employees won). Any charge that the settlement of the Claimants' claims is invalid because the Union was no longer the former employees' bargaining agent must fail (and has failed in all prior attacks) because, independent of the Union's asserted authority to represent the former employees under the collective bargaining agreement and under the powers of attorney executed by most of the former employees, the settlement of the former employees' claims in AP 88-43 rests soundly on the notice, hearing, opportunity to be heard, and opportunity to appeal afforded each former employee. The Report of Attorney Misconduct and Motion for Appointment

of Counsel are just the latest in an ever lengthening series of attempts to undermine the various settlements in this bankruptcy that are final, no longer appealable, and binding on all parties, including the Claimants.

Because the Named Claimants have stated no grounds for a finding of misconduct by B&F, it follows that their allegations against WM&S are equally unfounded.

The Named Claimants argue that the language of Rule V(A) requires the Court to appoint counsel to investigate any charge of misconduct that comes to its attention which, if substantiated, would warrant discipline. However, allegations which lack any shred of support and which are clearly incapable of being substantiated are insufficient to bring misconduct "to the attention"

of this Court.

The Court therefore DENIES the Named Claimants' Motion to Appoint Counsel.

## APPENDIX E

Rule X of Rules of Disciplinary Enforcement of the U.S. District Court, Southern District of Indiana.

### RULE X. APPOINTMENT OF COUNSEL

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court shall appoint as counsel the Executive Secretary and staff attorneys of the Indiana Supreme Court Disciplinary Commission. If such persons decline appointment, or such appointment is clearly inappropriate, this Court shall appoint as counsel one or more members of the bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these Rules; provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.